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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,025	12/29/2003	Robert W. Crocitto		4488

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EXAMINER
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ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/665,025	<b>Applicant(s)</b> CROCITTO, ROBERT W.	
	<b>Examiner</b> James H. Zurita	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Prosecution History***

On 29 December 2003, applicant filed the instant application. There are no claims to priority.

On 30 June 2005, the application was published as PG-PUB 2005/0144080. Paragraph numbers refer to paragraph numbers of the PB-PUB.

### ***Information Disclosure Statement***

The information disclosure statement filed 29 December 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "50" has been used to designate both data store 50, as in paragraph 23, and content distribution Network, as in paragraph 20.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) :

- they include the following reference character(s) not mentioned in the description: items 50a and 58 are not described.

- they do not include the following reference sign(s) mentioned in the description:  
item 50, content distribution system, is missing from Fig. 1.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

The following claims are objected to because of informalities:

Claim 2 refers to small client base and large client base. The terms small and large are relative terms that render the claim indefinite. The terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 4 refers to works "***subject*** to copyright" and "***not subject*** to copyright"

The terms are not defined by the claim, the specification does not provide a standard for

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ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 13 refers to "the process referenced in claim 12" but the term is not mentioned in claim 12.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6 and 13 are rejected under 35 U.S.C. 101 because the claim is directed to different statutory classes, a system claims 1-5 and method.

For purposes of this Examination, the Examiner will interpret the claims as being directed to a system. Prior Art will be interpreted to read on Claims 1-3 where Prior Art discloses structural components that are reasonable capable of performing applicant's intended functions. The Examiner notes that nothing in applicant's structure distinguishes the instant invention from the structure of the reference.

### ***Claim Rejections - 35 USC § 112***

**The following is a quotation of the first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 refers to "...initiate distribution lotteries between clients..." The term is mentioned several times, but there is no description of how a lottery is used.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 refers to "...initiate distribution lotteries between clients..." The term is mentioned several times, but there is no description of how a lottery is used. For purposes of Examination, the term will be interpreted as referring to selection of a client.

**The following is a quotation of the second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one

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sentence form only. Note the format of the claims in the patent(s) cited. See MPEP § 608.01(n).

Claims 1-5 will be interpreted as referring to a system; claims 6-12 will be interpreted as referring to method claims that parallel system claims 1-5.

Claim 6 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim are directed to both an apparatus and the method steps of using the apparatus. MPEP 2173.05(p).

Claim 13 refers to administrative body that is not described.

Claim 7 refers to an instrument that is not described. For purposes of Examination, the term will be interpreted as an entity authorized to make content available for public sale.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 (as interpreted) are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al. (USPG-PUB 20010051996). The claims are interpreted as best understood by the Examiner and in light of rejections and objections above.

**As per claim 1**, Cooper discloses content distribution system and methods for peer-peer content delivery (see, for example, at least Fig. 2, item 200) Cooper discloses

**a transaction server (Fig. 6, item 620):**

i. a persistent data store containing a database storing user and transaction information, as in paragraph 0168,

ii. a data communications interface [inherent for communications among computers],

and

iii. a controller operatively connected to the persistent data store and the data communications interface [necessary for any work to take place]; **and**

b. software executing in the transaction server [necessary for any work to take place], the software capable of:

i. client registration and logon authentication [e.g., paragraphs 42 and 85];

ii. tracking transactions between purchasing clients and distribution clients [e.g., paragraph 63];

iii. tracking initial content transfers to and from the **distribution server** [e.g., Fig. 3, step 360, paragraph 250];

iv. initiate distribution lotteries between clients [e.g., selecting a device and content for download, as in paragraphs 0019 and 0074].

**a distribution server (e.g., Fig. 2, archive server 240)**

i. **a persistent data store (Fig. 2, item 244, for example)**, the persistent data store containing a plurality of individually selectable data files, some of the data files being pre-loaded onto the persistent data store;

ii. a data communications interface operatively connected to a data communications network (Fig. 2, item 116) to effect a peer-to-peer network;



iii. a controller operatively connected to the persistent data store and the data communications interface (inherently present in order for communications between data store and interface); **and**

b. software executing in the distribution server [necessary for any work to take place], the software capable of:

- i. identifying validated clients allowed to download content based on transactions authorized by the **transaction server** [e.g., Fig. 3, step 360, paragraph 250];
- ii. allowing distribution of the data files when authorized by the publishers identified other workstations after receiving authorization from the **transaction server** [e.g., paragraphs 0127, 0281];
- iii. securing the data files from unauthorized access [e.g., paragraph 0064]; **and**
- iv. allowing publishers of the stored data files to manipulate the content [e.g., paragraphs 0228, 0232].

**As per claim 3**, Cooper discloses that client computer(s) run software that is used to connect [the clients] to the content delivery system via a network interface (e.g., Fig. 2, items 115, 116 are connected to the network via a network interface)

**As per claim 4**, Cooper discloses that data files comprise works subject to copyright and workings not subject to copyright (e.g., paragraph 2498).

**As per claim 5**, Cooper discloses the plurality of data files includes audio files, spoken audio files, visual image files, text files, video files, multimedia files, operating code files or configuration information files (e.g., paragraph 0006).

**As per claim 6**, Cooper discloses method(s) of distributing content delivery files, comprising: a. pre-loading a plurality of data files onto the persistent data store (Fig. 2, item 244) of the distribution server (e.g., Fig. 2, item 240);

b. initializing access of the system to a peer-to-peer network (as in Fig. 3, item 310, for example).

**As per claim 7**, Cooper discloses that content is not allowed to be uploaded or transfer into the network by anyone other than the content publisher or instrument of the content publisher authorized to make material available for public sale (e.g., paragraph 0124).

**As per claim 8**, Cooper discloses that content is distributed to clients from the **distribution server** or from another peer after the **transaction server** has validated the purchase of said content (as in Fig. 3, step 260, for example).

**As per claim 9**, Cooper discloses that content is authenticated and digitally verified for authenticity by the **transaction server** prior to initiating the content transfer from one peer to another (as in paragraphs 0018, 0042, for example).

**As per claim 10**, Cooper discloses that content is initially distributed from the **distribution server** to a single client then redistributed to other clients in a peer-to-peer fashion (as in paragraphs 57, 75, 255-256, for example).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper.

***As per claim 2***, Cooper discloses that any entity, large or small, may perform functions of the system (e.g., paragraph 0065).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Cooper to disclose combined servers in one computing device to service a small client base, and that servers are replaced a cluster of computing devices to service a large user base.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Cooper to disclose combined servers in one computing device to service a small client base, and that servers are replaced a cluster of computing devices to service a large user base for the obvious reason that computer resources (hardware and software) cost money. By serving small client bases with one computing device, a company may save money, whereas as a large client base may benefit from more resources to facilitate handling heavier loads on a network.

**Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper in view of Rose (PG-PUB 2004/0260652).**

As per claims 11, 12 and 13, **Cooper does not** specifically disclose

Claim 11, that content distribution is determined by distribution drawing conducted by the transaction server using accumulated points submitted into a random

drawing as the basis for determining the host client participating in the content distribution transaction.

Claim 12, that point(s) are awarded to clients when they purchase or distribute content to other peers within the content delivery system.

Claim 13, that points accumulated by the client are exchangeable for goods, cash or services at any time by the administrative body of the content delivery system.

These features are disclosed by Rosen.

***As per claim 11***, Rosen discloses that content distribution is determined by distribution drawing conducted by the **transaction server** using accumulated points submitted into a random drawing as the basis for determining the host client participating in the content distribution transaction. E.g., paragraph 0025.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Cooper and Rosen to disclose that content distribution is determined by distribution drawing conducted by the transaction server using accumulated points submitted into a random drawing as the basis for determining the host client participating in the content distribution transaction.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Cooper and Rosen to disclose that content distribution is determined by distribution drawing conducted by the transaction server using accumulated points submitted into a random drawing as the basis for determining the host client participating in the content distribution transaction for the obvious reason that

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one may use the scheme to determine and reward utilization of resources, as noted by Rosen, paragraph 0004.

***As per claim 12***, Rosen discloses point(s) are awarded to clients when they purchase or distribute content to other peers within the content delivery system. See, for example, at least paragraph 0045. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Cooper and Rosen to disclose that that point(s) are awarded to clients when they purchase or distribute content to other peers within the content delivery system.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Cooper and Rosen to disclose that that point(s) are awarded to clients when they purchase or distribute content to other peers within the content delivery system for the obvious reason that one may use the scheme to determine and reward utilization of resources, as noted by Rosen, paragraph 0004.

***As per claim 13***, Rosen discloses that points accumulated by the client are exchangeable for goods, cash or services at any time by the administrative body of the content delivery system. See abstract and 0014.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Cooper and Rosen to disclose that points accumulated by the client are exchangeable for goods, cash or services at any time by the administrative body of the content delivery system.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Cooper and Rosen to disclose that points accumulated by

the client are exchangeable for goods, cash or services at any time by an administrative body of the content delivery system for the obvious reason that clients may thus enjoy the benefit of receiving rewards for use of their computing resources.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**James Zurita**  
**Primary Examiner**  
**Art Unit 3625**  
29 August 2006

*James Zurita*  
*Primary Examiner*